

Message Text

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PAGE 01 BRUSSE 12335 221503Z
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TAGS: EEC, EGEN, EIND, ETRD
SUBJECT: ANTITRUST: PARTICIPATION BY SUBSIDIARIES OF
US COMPANIES IN EC COMMISSION'S INDUSTRIAL
POLICY CONSULTATION

1. THE EC COMMISSION, IN REPLY TO A QUESTION RAISED BY AN
EC PARLIAMENTARIAN, HAS SAID THAT PARTICIPATION OF
SUBSIDIARIES OF US COMPANIES IN JOINT CONSULTATIONS
ORGANIZED BY THE COMMISSION SHOULD NOT RAISE ANY PROBLEMS
FOR US ANTITRUST AUTHORITIES, ALTHOUGH IT APPEARS TO
RECOGNIZE THAT US ANTITRUST LAW MAY BE MORE STRINGENT.
MISSION RECOMMENDS THAT US/EC ANTITRUST CONSULTATIONS IN
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PAGE 02 BRUSSE 12335 221503Z

SEPTEMBER SEEK TO ADDRESS THIS PROBLEM IN ORDER TO AVOID
POTENTIAL MISUNDERSTANDINGS RE US ANTITRUST LAW AND/OR
DISCRIMINATORY TREATMENT TOWARDS US MULTINATIONALS.

2. TEXT OF EC PARLIAMENTARY QUESTION AND COMMISSION
RESPONSE FOLLOWS.

BEGIN TEXT: SUBJECT: PARTICIPATION BY SUBSIDIARIES OF
AMERICAN COMPANIES IN COMMUNITY CONSULTATIONS

THE COMMISSION IS CURRENTLY ENGAGED IN A SERIES OF JOINT
CONSULTATIONS WITH VARIOUS SECTORS OF THE ECONOMY AND IN
PARTICULAR WITH THE SYNTHETIC FIBRE, AUTOMOBILE AND OIL
INDUSTRIES. A NUMBER OF THE UNDERTAKINGS TAKING PART IN
THESE CONSULTATIONS ARE EUROPEAN SUBSIDIARIES OF
NON-EUROPEAN COMPANIES.

FEAR OF THE POSSIBLE EXTRA-TERRITORIAL IMPLICATIONS OF
AMERICAN ANTI-TRUST LEGISLATION HAS MADE EUROPEAN
SUBSIDIARIES OF AMERICAN COMPANIES VERY RELUCTANT TO TAKE
AN ACTIVE PART IN THESE CONSULTATIONS.

DOES THE COMMISSION NOT FEEL THAT IT SHOULD COME TO AN
ARRANGEMENT WITH AMERICAN ANTI-TRUST AUTHORITIES UNDER
WHICH THESE AUTHORITIES UNDERTAKE TO RAISE NO OBJECTIONS
TO PARTICIPATION BY SUBSIDIARIES OF AMERICAN COMPANIES IN
THE JOINT CONSULTATIONS ORGANIZED BY THE COMMISSION?

ANSWER TO WRITTEN QUESTION NO. 109/78 BY MR. COUSTE:

THE COMMISSION FEELS THAT THE PARTICIPATION BY EUROPEAN
SUBSIDIARIES OF AMERICAN COMPANIES IN JOINT CONSULTATIONS
ORGANIZED BY THE COMMISSION SHOULD NOT RAISE ANY PROBLEMS
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PAGE 03 BRUSSE 12335 221503Z

AS REGARDS THE APPLICATION OF ANTITRUST LEGISLATION. ANY
NATIONAL OR INTERNATIONAL AUTHORITY MAY, IN THE PERFORMANCE
OF ITS DUTIES, HAVE TO DEVELOP CONTACTS WITH AN ENTIRE
INDUSTRY. THERE WOULD, IN SUCH A CASE, BE NO GROUNDS FOR
EXCLUDING SOME FIRMS FROM THIS CONSULTATION PROCEDURE
SIMPLY BECAUSE THEY BELONG TO AN AMERICAN GROUP.

THE COMMISSION SEES NO NEED FOR A SPECIAL ARRANGEMENT WITH
THE AMERICAN ANTI-TRUST AUTHORITIES TO ALLOW EUROPEAN
SUBSIDIARIES OF AMERICAN COMPANIES TO TAKE PART IN
CONSULTATIONS WHICH ARE A STANDARD PRACTICE IN DEALING
WITH COMMUNITY PROBLEMS. IF, HOWEVER, FOR FEAR OF PRO-
CEEDINGS UNDER AMERICAN ANTI-TRUST LEGISLATION THESE
FIRMS PREFER NOT TO TAKE PART IN SUCH CONSULTATIONS, THE
COMMISSION CAN ONLY ABIDE BY THIS DECISION. END TEXT.

3. MISSION COMMENT: THE EC COMMISSION HAS TAKEN AN
ACTIVIST APPROACH TO INDUSTRIAL POLICY AND THIS HAS POSED
PROBLEMS FOR SUBSIDIARIES OF US COMPANIES OPERATING
UNDER TWO DIFFERENT ANTITRUST SYSTEMS. WE DO NOT SEE A
PROBLEM DEVELOPING BETWEEN THE US AND THE EC ON THIS ISSUE,
BUT IT COULD BE USED BY EUROPEAN-BASED FIRMS TO DRIVE A

WEDGE BETWEEN THE COMPANIES AND THE COMMISSION. THE
MISSION RECOMMENDS THEREFORE THAT WASHINGTON OFFICIALS
TAKE ADVANTAGE OF THE US/EC ANTITRUST CONSULTATIONS
TENTATIVELY SCHEDULED FOR SEPTEMBER TO MAKE SURE THEIR
EC COMMISSION COUNTERPARTS UNDERSTAND US POLICIES IN THIS
AREA. IN ADDITION TO REDUCING THE POSSIBILITY OF
DISCRIMINATORY ISOLATION OF SUBSIDIARIES OF US COMPANIES,
A CLEARER APPRECIATION OF US ANTITRUST CONSTRAINTS MIGHT
SLOW A TREND TOWARDS CARTELIZATION IN INDUSTRIES WHERE
THESE COMPANIES PLAY AN IMPORTANT ROLE. HINTON

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